

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 22722 of 2007(S)

OPG&W.1428/2006 of FAMILY COURT,ERNAKULAM

PETITIONERS: RESPONDENTS 1-5 IN IA.

- 1. JOSE ANTONY,
VALIYATH HOUSE, NEAR PADAMUGAL SCHOOL,
PADAMUGAL, KAKKANADU.**
- 2. ROBIN JOSE,
VALIYATH HOUSE, MURFFY NIVAS, AROOR P.O.,
ALAPPUZHA DISTRICT.**
- 3. MELBIN JOSE,
VALIYATH HOUSE, NEAR PADAMUGAL SCHOOL,
PADAMUGAL, KAKKANAD.**
- 4. STANELY JOSE,
VALIYATH HOUSE, ST. FRANCIS EAST, KALOOR P.O.,
KALOOR, KOCHI-17.**
- 5. ANCIL JOSE,
VALIYATH HOUSE, ST. JAMES ROAD,
THAIKOODAM, COCHIN.**

**BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON**

RESPONDENTS:

- 1. LALY JOHN @ LAILA, W/O. JOHN P.P.,
PALAKKPILLIL HOUSE, SUN VIEW APARTMENTS,
SAMARMATHI ROAD, PALARIVATTOM, KOCHI-25.**

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- 2. K.J. JOSEPH,
KOLOTHUMVEETTIL HOUSE, MLA ROAD, NETTOOR P.O.,
NETTOOR, VIA. MARADU-682 304.**
- 3. MARY JOSEPH,
KOLOTHUMVEETTIL HOUSE, MLA ROAD, NETTOOR P.O.,
NETTOOR, VIA. MARADU-682 304.**
- 4. K.J. ANTONY,
KOLUTHUMVEETTIL HOUSE, M.C. ROAD,
KODUVAAL, PERUMBAVOOR-42.**
- 5. DENNY JOSEPH,
KOLOTHUMVEETTIL HOUSE, MLA ROAD, NETTOOR P.O.,
NETTOOR, VIA. MARADU-04.**
- 6. DAISY JACOB,
CHAKKALAKKAL HOUSE, NETTOOR P.O.,
NETTOOR, VIA. MARADU-04.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY & V.GIRI, JJ.

W.P. (C) .NO.22722 OF 2007 (I)

Dated 3rd August, 2007

JUDGMENT

Koshy, J.

Respondents 1 to 5 in a Guardian O.P. are the petitioners herein. The guardian O.P. was filed by the 1st respondent for the custody of minor child aged about 11 years who lost her parents. As per the impugned interim order, the custody was given to the 1st respondent, who is the maternal aunt of the minor child. It is contended that various findings mentioned in the order are with out evidence. It is also submitted that as per the order, even the paternal grand father who is unable to travel is prevented from seeing the child occasionally. The impugned order is only a preliminary order. Final order should be passed untrammelled by the observations in the preliminary order. With regard to the visitation right of the paternal uncle and appellant to see the child, petitioners can move a petition before the Family Court notwithstanding with

the observations in the interim order. We are not inclined to interfere in the interim stage of the proceedings by using powers under Article 227 of the Constitution of India in the absence of patent illegality or error of jurisdiction. Accordingly we dispose of this writ petition without prejudice to the rights of the petitioners to approach the court below for further orders or early final disposal of the matter according to law. A copy of this judgment may be produced by the petitioner before the Family Court.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp